DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF THIRD EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2006 Repl. & 2012 Supp.)), and section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2008 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to chapter 65 (Medicaid Reimbursement to Nursing Facilities) of title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

Nursing facilities located in the District of Columbia and participating in the Medicaid program are reimbursed on a prospective basis, at a facility specific per diem rate. Each facility's per diem rate is developed by establishing a base year per diem rate for each facility, adjusted semi-annually for case mix. DHCF recently detected that Medicaid's reimbursement methodology allows a facility to receive payments for therapy costs from both Medicare and Medicaid. This rule will limit payments to therapy costs that are associated with Medicaid beneficiaries and also clarify the allocation of therapy costs that are categorized under nursing and resident care costs. The District will realize a savings of nine hundred thousand dollars ($900,000) for the remainder of FY 2012 and, for FY 2013 and going forward, an annual savings of two million one hundred thousand dollars ($2,100,000) as a result of the limitation of payments for therapy costs. Over the past three (3) years, the District's Medicaid program has experienced an unprecedented growth in enrollment. This increased enrollment has created huge budget pressures for the District which poses a threat to the preservation of health care delivery to Medicaid beneficiaries. Emergency action is necessary to ensure that adequate resources are available and properly allocated during this crisis, thus, minimizing the potential for a reduction in the delivery of healthcare services to Medicaid beneficiaries.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on August 24, 2012 (59 DCR 010311). Comments were received. Section 6521 governing incentive payments to support quality improvement initiatives have been eliminated. Since the submission of the state plan amendment, it became apparent that a new program design would be required to support an ongoing quality improvement initiatives program and additional time would be necessary to develop the program. Upon completion of the program design, DHCF will submit a state plan amendment to support reimbursement for quality improvement initiatives.

This third notice of emergency and proposed rulemaking was adopted on November 30, 2012, and became effective on that date. The emergency rules shall remain in effect for one hundred twenty (120) days or until March 29, 2013, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to adopt this proposed rule in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 65 (Medicaid Reimbursement of Nursing Facilities) of title 29 (Public Welfare) of the DCMR is amended to read as follows:

Section 6501 (Reimbursement of Nursing Facilities) is amended to read as follows:

6501 REIMBURSEMENT OF NURSING FACILITIES

6501.1 Each nursing facility shall be reimbursed on a prospective basis at a facility-specific per diem rate for all services provided, except prescription drugs. The facility-specific per diem rate shall be developed by establishing a base year per diem rate for each facility, subject to a ceiling, adjusted semi-annually for case mix and subject to other adjustments. A facility may also receive an add-on payment for each resident receiving ventilator care pursuant to the requirements set forth in sections 6509 through 6511.

6501.2 The base year costs for each free-standing or hospital-based nursing facility shall be calculated using a nursing facility's actual audited allowable costs for the nursing facility's fiscal year that ends on or after January 1, 2000, but no later than December 31, 2000.

6501.3 The base year per diem rate for each hospital-based nursing facility shall be calculated using actual audited allowable costs for the nursing facility's fiscal year that ends on or after January 1, 1999, but no later than January 31, 1999.

6501.4 Except for depreciation, amortization, and interest on capital-related expenditures, the base year costs for each nursing facility shall be adjusted to October 1, 2000, using the Centers for Medicare and Medicaid Services (CMS) Prospective Payment System Skilled Nursing Facility Input Price Index.

6501.5 The base year per diem rate for each facility is based on its audited allowable base year costs and shall be developed using three (3) cost categories: routine and support expenditures; nursing and resident care expenditures; and capital related expenditures.

6501.6 Routine and support expenditures shall include expenditures for:

(a) Dietary items, except raw food;

(b) Laundry and linen;

(c) Housekeeping;

(d) Plant operations and related clerical support;

(e) Volunteer services;

(f) Administrative and general salaries;

(g) Professional services – non-healthcare related;

(h) Non-capital related insurance;

(i) Travel and entertainment;

(j) General and administrative costs;

(k) Non-capital related interest expense; and

(l) Other miscellaneous expenses as noted on the cost report submitted pursuant to section 6518.

6501.7 Nursing and resident care costs shall include the costs of:

(a) Raw food;

(b) Nursing and physician services and their related clerical support services;

(c) Non-prescription drugs and pharmacy consultant services;

(d) Medical supplies;

(e) Laboratory services;

(f) Radiology services;

(g) Physical, speech, and occupational therapy services that are provided to Medicaid beneficiaries;

(h) Social services;

(i) Resident activities;

(j) Respiratory therapy;

(k) Oxygen therapy; and

(l) Utilization and medical review.

6501.8 Capital related costs shall include the costs of:

(a) Equipment rental;

(b) Depreciation and amortization;

(c) Interest on capital debt;

(d) Facility rental;

(e) Real estate taxes and capital related insurance;

(f) Property insurance; and

(g) Other capital-related expenses.

6501.9 The total base year per diem for a facility for each Medicaid resident day shall be the sum of:

(a) The nursing and resident care costs per diem, subject to a ceiling and adjusted semi-annually for case mix;

(b) The routine and support costs per diem, subject to a ceiling;

(c) Any incentive payment; and

(d) Capital related costs per diem.

6501.10 Provider tax expenses shall not be included in calculating the base year costs.

6501.11 The costs attributable to paid feeding assistants provided in accordance with the requirements set forth in 42 C.F.R. parts 483 and 488 shall be included in nursing and resident care costs for base years beginning on or after October 27, 2003.

Section 6505 (Nursing and Resident Care Costs Per Diem Calculation) of chapter 65 (Medicaid Reimbursement to Nursing Facilities) is amended to read as follows:

6505 NURSING AND RESIDENT CARE COSTS PER DIEM CALCULATION

6505.1 Each nursing facility's allowable nursing and resident care costs shall be adjusted in accordance with subsection 6501.4.

6505.2 The total resident days shall be determined in accordance with subsection 6512.2.

6505.3 The amount calculated in subsection 6505.1 shall be divided by the Total Facility Case Mix Index to establish case mix neutral costs. This process is known as case mix neutralization.

6505.4 For nursing and resident care costs other than those defined at subsection 6501.7(g), the case mix neutral costs established in subsection 6505.3 shall be divided by the resident days calculated in accordance with subsection 6512.2 to determine each nursing facility's nursing and resident care cost per diem without physical, speech, and occupational therapy services. To this resulting per diem, shall be added the per diem for nursing and resident care costs defined in subsection 6501.7(g). The per diem for physical, speech, and occupational therapy services shall be calculated by dividing such costs by total Medicaid resident days. The resulting sum of the per diems shall comprise each nursing facility's nursing and resident care cost per diem unadjusted for case mix.

6505.5 The ceiling established in accordance with subsections 6502.4 through 6502.6 for nursing and resident care costs for each peer group shall be multiplied by 163 percent (163%).

6505.6 The nursing and resident care cost per diem rate unadjusted for case mix shall be the lower of the facility-specific per diem calculated pursuant to subsection 6505.4 or the adjusted ceiling relative to each nursing facility calculated in accordance with subsection 6505.5.

6505.7 Each nursing facility shall be entitled to an incentive payment of forty percent (40%) of the difference between the facility-specific per diem rate established in subsection 6505.4 and the adjusted ceiling calculated in accordance with subsection 6505.5, if the facility-specific per diem rate calculated in accordance with subsection 6505.4 is lower than the adjusted ceiling relative to each nursing facility established pursuant to subsection 6505.5.

6505.8 The nursing and resident care cost per diem adjusted for case mix shall be determined by multiplying the nursing and resident care cost per diem calculated in accordance with subsection 6505.6, or if applicable, the nursing and resident care cost per diem adjusted for incentive, as set forth in subsection 6505.7, by the Facility Medicaid Case Mix Index.

6505.9 The Facility Medicaid Case Mix Index used to establish the rates at implementation shall be developed from resident assessment data taken from the time period beginning October 1, 2001, through September 30, 2002.

6505.10 The nursing and resident care cost per diem shall be adjusted for case mix beginning April 1, 2006, and every six (6) months thereafter. The data used to establish the Facility Medicaid Case Mix Index for the semi-annual adjustment shall be developed as follows:

(a) October 1 shall be the average of the preceding year fourth calendar quarter and first calendar quarter picture dates; and

(b) April 1 shall be the average of the preceding year second calendar quarter and third calendar quarter picture dates.

6505.11 DHCF shall substitute the Facility Medicaid Case Mix Index with the District-wide Medicaid Case Mix Index if there are no valid assessments for a nursing facility during a picture date.

Comments on the proposed rules shall be submitted in writing to Linda Elam, Ph.D., Deputy Director/Medicaid Director, Department of Health Care Finance, 899 N. Capitol St, NE, 6th Fl. Washington, DC, 20011, by email to DHCFPubliccomments@dc.gov, online at www.dcregs.dc.gov, or by telephone at 202.442.9115 within thirty (30) day from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.